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No. 286.

Br. of Hays & Borah for Appellee

Office Supreme Court U.S.
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Supreme Court of the United States.

Filed Nov. 26, 1900.

October Term, 1900.

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JACK DAVIS, Appellant,

vs.

J. E. BURKE, Sherriff of Cassia County, Idaho, Appellee.

Appeal from the Circuit Court of the United States for the District of Idaho.

BRIEF OF APPELLEE.

SAMUEL H. HAYS,
Attorney General of Idaho,
AND W. E. BORAH,
For Appellee.

(17768.)

Statesman Printing Co., Boise, Idaho.

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STATEMENT OF THE CASE.

This is an appeal from an order of the Circuit Court of the United States for the District of Idaho, denying appellant's petition for a writ of habeas corpus.

John C. Wilson was murdered in Cassia County, Idaho, on or about the 17th day of February, 1896. An information charging the appellant, Jack Davis, with the murder of said Wilson was filed April 5th, 1897, in the District Court in and for Cassia County. On April 15th, 1897, appellant was found guilty of murder in the first degree, and on the 24th day of

the same month was sentenced to be hanged June 4th, 1897.

A motion for new trial made to the District Court was denied, an appeal was taken to the Supreme Court of Idaho, and on May 6th, 1898, the judgment of the lower court was, by the Supreme Court, affirmed.

53 Pac. 678. L

On September 12th, 1898, appellant was resentenced, October 28th, 1898, being the day fixed for the execution. An application for pardon had been presented to the State Board of Pardons, and on January 23rd, 1899, said Board denied the application. Thereupon a petition for a writ of habeas corpus was presented to the United States District Judge for Idaho, which petition was denied January 30th, 1899.

An appeal taken from the order denying said writ was, on October 16th, 1899, dismissed by the United States Circuit Court of Appeals.

See Davis vs. Burke, 97 Fed. 501.

At the time of the commission of the offense by appellant, also at the time of the trial, the rendition of judgment, and the original sentence of appellant, the law of the State of Idaho provided that executions of defendants convicted of murder in the first degree should take place at the county jail under the direction of the Sheriff.

Section 8021, Revised Statutes.

While this case was pending before the Circuit Court of Appeals this section of the statute was amended (Laws of 1899, page 340) so as to provide for execution at the State penitentiary under the direction of the Warden. After the passage of this act, which was approved February 18th, 1899, the defendant was removed from the county jail of Cassia County to the State penitentiary.

Subsequently, concluding that this procedure was erroneous, the Sheriff of Cassia County brought a petition for habeas corpus in the Supreme Court of Idaho.—(See 59 Pac. 544.) In this proceeding the Supreme Court decided that the Act of February 18th, 1899, above mentioned, amending certain sections of the Revised Statutes of 1887 regulating the time, place and manner of inflicting the death penalty, construed with Section 159 of the Revised Statutes, was not applicable to past offenses, and that said Davis should be executed in accordance with the law as it stood at the time of the commission of the offense, the trial and the original sentence. In accordance with this decision appellant was returned to the custody of the Sheriff of Cassia County.

After the decision in the Circuit Court of Appeals, and while appellant was awaiting resentence by the State Court, he presented his petition for a writ of habeas corpus to the United States Circuit Court for the District of Idaho, and on the denial of said petition brought this appeal. The chief points which seem to be urged by appellant are:

1. That the Act of the Legislature of the State

of Idaho providing for informations is invalid, for the reason that it was not passed in the manner provided by the Constitution of the State. That the provision of the Constitution of the State providing for informations is not self-operative,and,therefore, the defendant has never been legally charged with a crime.

2. That the Act of February 18th, 1899, providing for executions at the State penitentiary under the direction of the Warden, instead of at the county jail under the direction of the Sheriff, is, as to this defendant, *ex post facto;* and that he can not be executed under Section 8021 of the Revised Statutes as it formerly stood, for the reason that the same has been repealed by the Act of February 18th, 1899.

ARGUMENT.

Replying to the points raised, we say:

That the case as presented by appellant calls for the construction by this Court of the statutes and Constitution of the State of Idaho.

That nearly all of the prosecutions for the last ten years in the State of Idaho have been by information, and that it is extremely unusual to prosecute in any other manner. That in the State Court the validity of the information law remains unquestioned.

Although an appeal was taken to the Supreme Court of Idaho from the judgment of the lower court, and the proceedings of the lower court vigorously assailed, for some reason the question of the validity of the information law was not raised.

Appellant still seems disinclined to present that question to the State Court.

As we understand it the practice is well settled that habeas corpus to review the judgment of a State Court in a criminal case on the ground that some right under the Constitution of the United States has been denied to the person convicted, will not be granted except in a few unusual cases, as the proper remedy is by writ of error.

We invoke that rule here. In the case of the State of New York vs. Eno, 155 U. S. 89, this Court said:

"When the State Court shall have finally acted upon the case the Circuit Court has still a discretion whether under all the circumstances then existing the accused if convicted shall be put to his writ of error from the highest court of the State, or whether it will proceed by writ of habeas corpus summarily to determine whether the petitioner is restrained of his liberty in violation of the Constitution of the United States."

In Whitten vs. Tomlinson, 160 U. S. 231, after calling attention to a number of special cases, this Court said:

"But except in such peculiar and urgent cases the courts of the United States will not discharge the prisoner by habeas corpus in advance of a final determination of his case in the courts of the State; and *even after final determination in those courts* will generally leave the petitioner to the usual and orderly proceeding by writ of error from this court."

In Ex parte Frederick, 149 U. S. 70, in discussing this question, it was said:

"It is certainly the better practice in cases of this

kind to put the prisoner to his remedy by writ of error from this Court under Section 709, Revised Statutes, than to award him a writ of habeas corpus."

In Baker vs. Grice, 169 U. S. 284, it was said:

"The court below had jurisdiction to issue the writ and to decide the questions which were argued before it. Ex parte Royall, 117 U. S. 241; Whitten vs. Tomlinson, 160 U. S. 231. In the latter case most of the prior authorities are mentioned. From these cases it clearly appears as the settled and proper procedure, that while Circuit Courts of the United States have jurisdiction, under the circumstances set forth in the foregoing statement, to issue the writ of habeas corpus, yet those courts ought not to exercise that jurisdiction by the discharge of a prisoner unless in cases of peculiar urgency, and that instead of discharging they will leave the prisoner to be dealt with by the courts of the State; that after a final determination of the case by the State Court, the Federal Courts will even then generally leave the petitioner to his remedy by writ of error from this court."

To the same effect see—

Duncan vs. McCall, 139 U. S. 449.

Tinsley vs. Anderson, 171 U. S. 101.

Markuson vs. Boucher, 175 U. S. 184.

In considering what cases were urgent or special so as to take them out of the operation of the general rule it was said, in Ex parte Royall, 117 U. S. 241:

"When the petitioner is in custody by State authority for an act done or omitted to be done in pursuance of a law of the United States, or of an

order, process or decree of a court thereof; or where, being a subject or citizen of a foreign State, and domiciled therein, he is in custody, under like authority for an act done or omitted under an al leged right, title, authority, privilege, protection or exemption claimed under the commission, or order or sanction of any foreign State, or under color thereof, the validity and effect whereof depend upon the law of nations; in such and like cases of urgency, involving the authority and operations of the general government, or the obligations of this country to, or its relations with, foreign nations, the Courts of the United States have frequently interposed by writs of habeas corpus and discharged prisoners who were held in custody under State authority. So, also, when they are in the custody of a State officer, it may be necessary, by use of the writ, to bring them into a court of the United States to testify as witnesses. The present cases involve no such considerations. Nor do their circumstances, as detailed in the petitions, suggest any reason why the State Court of original jurisdiction may not, without interference on the part of the Courts of the United States, pass upon the question which is raised as to the constitutionality of the statutes under which the appellant is indicted."

In Whitten vs. Tomlinson, above cited, it was said:

"In Ex parte Royall and in New York vs. Eno it was recognized that in cases of urgency, such as those of prisoners in custody, by authority of a State, for an act done or omitted to be done in pursuance of a law of the United States, or of an order or process of a court of the United States, or otherwise involving the authority and operations of the general government, or its relations to foreign na-

tions, the courts of the United States should interpose by writ of habeas corpus."

The cases of Cunningham vs. Neagle, 135 U. S. 1, Thomas vs. Loney, 134 U. S. 372, and Mali vs. Hudson County, Jail Keeper, 120 U. S. 1, were admittedly special cases coming under the exception to the general rule.

As to the reason for the rule, it was said in the case of Royall:

"The Circuit Court was not at liberty under the circumstances disclosed, to presume that the decision of the State Court would be otherwise than is required by the fundamental law of the land, or that it would disregard the settled principles of constitutional law announced by this court, upon which is clearly conferred the power to decide ultimately and finally all cases arising under the Constitution and laws of the United States. In Taylor vs. Carryl, 20 How. 595, it was said to be a recognized portion of the duty of this court (and we will add, of all other courts, National and State) 'to give preference to such principles and methods of procedure as shall seem to conciliate the distinct and independent tribunals of the States and of the Union, so that they may co-operate as harmonious members of a judicial system co-extensive with the United States, and submitting to the paramount authority of the same Constitution, laws, and Federal obligations.' And in Covell vs. Heyman, 111 U. S. 182, it was declared 'that the forbearance which courts of co-ordinate jurisdiction, administered under a single system, exercise towards each other, whereby conflicts are avoided, by avoiding interference with the process of the other, is a principal of comity, with perhaps no higher sanction than the utility which comes from concord; but be-

tween State Courts and those of the United States it is something more. It is a principle of right and of law and, therefore, of necessity.' "

And again, in Baker vs. Grice, it was said:

"The reason for this course is apparent. It is an exceedingly delicate jurisdiction given to the Federal Courts by which a person under an indictment in a State Court and subject to its laws may, by the decision of a single Judge of the Federal Court, upon a writ of habeas corpus, be taken out of the custody of the officers of the State and finally discharged therefrom, and thus a trial by the State Courts of an indictment found under the laws of a State be finally prevented."

We take it from the authorities cited that the rule is well settled. That the proper remedy is by writ of error from the State Court and that the United States Circuit Court, in the exercise of its discretion, very properly denied the writ. That this case presents no special or peculiar urgency such as would take it out of the general rule. In fact this is particularly a case in which the general rule should be invoked, since this Court is asked here to say that the statute providing for informations in the State of Idaho, under which prosecutions have been conducted for the past ten years, is void, and this before that question has been settled by the State Court. We think this case stands in the same position as Markuson vs. Boucher, and that this Court will decline to examine the other questions raised.

We do not, however, wish to be considered as admitting the unconstitutionality of the Information Act. Section 15, Article III of the Constitution of Idaho is as follows:

"No law shall be passed except by bill, nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same shall have been read on three several days in each house previous to the final vote thereon: *provided*, in case of urgency, two-thirds of the house where such bill may be pending may, upon a vote of the yeas and nays, dispense with this provision. On the final passage of all bills they shall be read at length, section by section, and the vote shall be by yeas and nays upon each bill separately, and shall be entered upon the journal; and no bill shall become a law without the concurrence of a majority of the members present."

Appellant relies upon the construction placed upon this section by the Idaho Supreme Court in the case of Cohn vs. Kingsley, 49 Pac. 985.

The legislative record of the Act here in question may be briefly summarized as follows: House Bill No. 33 was introduced in the House and read the first time January 7th. Read the second time January 8th, on which day it was also ordered printed. On March 3rd was read the third time, and placed upon its final passage, the ayes and nays being duly taken. It was then transmitted to the Senate. Was read the first time March 3rd. On March 4th it was moved that Section 3 be amended by striking out the words "different offenses and different degrees of the same offense may bejoined in one information in all cases where the same might by different counts in one indictment," which motion prevailed. The bill was then read a second time, the rules were suspended, and it was read a third time and placed

upon its final passage, the ayes and nays being duly taken.

Owing to the striking out of the words above quoted the bill was sent back to the House, where, on March 11th, the amendment striking out the aforesaid words was concurred in. The ayes and nays were not entered upon this motion on the journal. The bill was not reprinted after the words quoted were stricken out, nor was it thereafter read three times on three several days in each House. This is the substance of the objections made by appellant. We insist that these objections do not invalidate the Act. Every word in the law as it now stands was read in each House on three several days and was duly printed. The only change made was the striking out of the words above mentioned. This in no way changed the purpose, object, or scope of the bill. We contend that the decisions of the Supreme Court of Idaho, as they now stand, are such that this Court can not say that there is such a settled rule or policy as requires this Court to hold this Act invalid. The section of the Constitution in question was first construed by the Idaho Supreme Court in the case of State vs. Doherty, 2 Idaho, 1105. In that case the bill in question was subject to all of the objections which were pointed out in this case, with the further objection that the title to the bill was amended by the House, and that after this change the bill was never returned to the Senate for its concurrence. Notwithstanding the objections made the Act was held valid.

The next case upon this question was Cohn vs.

Kingsley, 49 Pacific, 985, upon which appellant relies. This was followed by the case of Brown vs. Collister, 51 Pac. 417, to the same effect. In neither of these cases is any mention made of State vs. Doherty. The question was also presented in People vs. Alturas County, 55 Pac. 1067. This was a proceeding instituted for the purpose of testing the validity of the Act of the Legislature creating Blaine (formerly Alturas) County. In a previous case the constitutionality of the Act had been attacked upon other grounds and had been held valid. The new county had been recognized by executive, legislative, and judicial acts, and the court, after a careful consideration, declined to examine into the manner of the passage of the Act.

State vs. Baker, 56 Pac. 81, is the next case in which the point is raised. It was, however, decided upon other grounds. The case of Marshal, 56 Pac. 470, was a petition for writ of habeas corpus, the grounds alleged in the petition being that the Act amending the Information Act here in question was invalid, the objections urged being substantially the same as are presented here and the record being in a similar condition, but the Court said: "Conceding the facts to be as stated in the petition, the writ must be denied; for it appears that the District Court had jurisdiction, both of the offense and of the person of the petitioner. If the Act of March 6th, 1893, is void, the Act of March 13, 1891, is valid and the only change attempted in it by the Act of March 6th, 1893, is to repeal that part of Section 3 relating to the verification of the Information."

The Act of March 13th, 1891, which is here stated by the court to be valid, is the identical Act which is here in question. The next case involving this constitutional provision is State vs. Mulky, 59 Pacific, 17.

In that case the court said:

"Touching the second assignment of error an inspection of the record shows that it is based upon the idea that the engrossed bill is different from the printed bill. This contention is not sustained by the record. The legislative journals, as shown by the transcript, do not set forth the printed bill, but do show that the bill was printed. The journal of the Senate also shows that one of the senators who opposed the passage of the bill claimed that the bill was not correctly printed for the reason that the word "testifying" in Section 7, appeared as "testimony" in the printed bill. The Senate did not take this view of the matter. Upon the record before us the presumption is that the bill was correctly printed, and this assignment of error is not sustained."

This decision would seem in some respects to modify the doctrine of presumption with regard to the record as laid down in Cohn vs. Kingsley.

The last case in which this question was considered is State vs. McGraw, 59 Pac. 178. This involved an Act of the Legislature defining the crime of rape, being the same statute in question in the case of State vs. Baker, above mentioned. The objections urged in the McGraw case were substantially the same as those urged here. The age of consent in the original bill having been fixed at seventeen years was by amendment changed to eighteen

years. The bill was not, after this amendment, read on three several days in each House. The case as reported does not fully disclose the condition of the record and we therefore, in an appendix to this brief, quote from the original record of the case, the House and Senate journal entries upon which it was urged that the Act was unconstitutional. Upon this record the court said:

"The second error assigned involves the constitutional passage of the Act under which the defendant was prosecuted and convicted. We have examined a certified copy of the House and Senate journals in regard to the passage of said Act. It shows that said bill was duly printed, and read three times in each house; that on its final passage in each house said bill was read at length, section by section, and a yea and nay vote taken thereon, which vote was entered on the respective journals; and that said Act was passed by a majority of the members present in each house. The Act was duly enrolled, signed by the Speaker of the House and President of the Senate, and approved by the Governor. The bill was regularly passed and the court did not err in so holding."

We insist that the Act here in question was considered valid in the Marshal case, and further that this act would not, in view of the decision of the McGraw case, be held invalid by the State Court.

We do not think it necessary to discuss the question whether or not the constitutional provision authorizing prosecutions by information is self-executing or not, other than to suggest that at common law there was a well defined procedure for the prosecution of misdemeanors by information.—

(See Ex parte Wilson, 114 U. S. 417.) That the Constitution gave the right to prosecute in this manner, which amounted merely to an extension of the right previously given at common law, and that there was therefore no necessity for the Legislature to define the procedure to be adopted. The Constitution gave the right and the common law supplied the procedure.

The second point suggested by appellant is that appellant can be executed only under the Act of the Legislature providing for executions at the State penitentiary, and not under the law as it stood at the time of his trial and conviction and original sentence. That question, however, was settled adversely to the contention of appellant in the State Supreme Court in a proceeding to which he was a party (In re Davis, 59 Pac. 544), and this point must therefore be necessarily decided against appellant under McNulty vs. The People, 149 U. S. 645.

In conclusion, we say that the judgment of the Circuit Court should be affirmed for the reason that no abuse of discretion is shown in denying the writ. That it is the well settled practice that the remedy in cases of this kind is by writ of error, and that the State Court should first be given an opportunity to pass upon the validity of the Information Act and construe the State constitutional provisions. That there is no well settled rule of decision in the State Courts upon a record such as this which would require this court to declare the Information Act invalid; but, on the contrary, the decision in the Mc-

Graw case would require the Act to be held valid. That even if the Act were invalid, that the constitutional authorization, aided by the procedure prescribed by the common law, would be a sufficient authorization for prosecutions by information.

That the State Court has construed the State statute with regard to the manner of punishment of the appellant, so that he must be executed under the law in force at the time of the commission of the offense, the trial of the cause, and the rendition of judgment, and that this Court, under the well settled rule, must follow that decision. We therefore say that the judgment and order of the Circuit Court should be affirmed.

Respectfully submitted,

SAMUEL H. HAYS,

Attorney General,

W. E. BORAH,

For Appellee.

APPENDIX.

LEGISLATIVE RECORD IN STATE VS. MCGRAW.

House and Senate Journal Entries of House Bill No. 73, By Neill.

"An Act to amend Section 6765 of the Revised Statutes, so as to raise the age of consent to eighteen years." Passed at the Third, 1895, Session of the Legislature of the State of Idaho.

House Journal.

(January 19, 1895. Page 73.)

Introduction of House Bills, Joint Resolutions and Memorials.

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House Bill No. 73—By Neill.

First Reading of House Bills, Joint Resolutions and Memorials.

.....

(Page 74.)

House Bill No. 73—By Neill: A bill for an act to amend Section 6765 of the Revised Statutes, so as to raise the age of consent to seventeen years.

(January 22, 1895. Page 91.)

Second reading of House Bills, Joint Resolutions and Memorials.....

House Bill No. 73—By Neill: Ordered printed and referred to committe on public health.

(January 23, 1895. Page 95.)

Report of Standing Committee.

Boise City, January 23, 1895.

Mr. Speaker:—

Your committee on printing reports that it has printed House Bill No.....73.....

D. GAMBLE,

Chairman.

(January 23, 1895. Page 117.)

Reports of Standing Committees.

Boise City, January 28, 1895.

Mr. Speaker:—

Your committee on public health reports that it has had under consideration House Bill No. 73, by Neill, and suggest that the word "eighteen" be in-

serted instead of the word "seventeen" in line 6, Section 1. The bill is correctly printed and we report the same back with the recommendation that it do pass.

J. J. BENNETT,
Chairman.

Placed on the calendar.
(January 31, 1895. Page 150.)
Committee of the Whole.

. . . . . .

Report of the Committee of the Whole.

. . . . . .

Mr. Speaker:—

The committee of the whole having under consideration House Bill No. 73, having directed me to report the same with amendments by committee on public health, and recommend that the bill do pass as amended.

HENRY,
Chairman.

Report was concurred in.
February 4, 1895. Page 162.)
Reports of Standing Committees.
Boise City, February 4, 1895.

Mr. Speaker:—

Your committee on engrossment reports that it has had under consideration House Bills Nos..... and 73, and report the same correctly engrossed.

VANCE,
Chairman.

Adopted.
(February 5, 1895. Page 177.)
Boise City, February 5, 1895.

Mr. Speaker:—

Your committee on printing reports that it has had printed in its amended form House Bill No. 73.

D. GAMBLE,
Chairman.

Third Reading House Bills, Joint Resolutions and Memorials.

House Bill No. 73—By Neill: An Act to amend Section 6765 of the Revised Statutes, so as to raise the age of consent to eighteen years.

Was read a third time.

The question being "shall the bill pass?"

The ayes and nays were taken with the following result:

Yes—Messrs. Brown, Bennett, Baxter, Cowden, Crane, Clark, Daley, Davis, Elder, Fletcher, Gamble, Glenn, Henry, Hicks, Johnson, Monroe, McCarthy, McMillan, Neill, Randolph, Rowton, Smith, Sanders, Thompson, Thomas, Verbeck, Warring, Walker, Wyman, Walters, Young, N. H. Young, James D., Mr. Speaker—33.

No—None.

And so the bill passed.

The title was read and approved.

(February 18, 1895. Page 263.)

Message from the Senate.

Office of the Secretary of the Senate,
Boise City, February 18, 1895.

Mr. Speaker:—

I am directed by the Senate to inform your honorable body that the Senate has had under consideration and passed: House Bill No. 73—by Neill. "An Act to amend Section 6765 of the Revised Statutes, etc."....

Respectfully,
J. M. WELLS,
Secretary.

(February 19, 1895. Page 269.)

The Speaker announced that he was about to sign House Bill No. 73, by Neill. An Act to amend Section 6765 of the Revised Statutes, so as to raise the age of consent to 18 years.

(Page 274.)

Boise City, February 19, 1895.

Mr. Speaker:—

Your committee on enrollment report that they have had correctly enrolled House Bill No. 73, entitled, "An Act to amend Section 6765 of the Revised Statutes, so as to raise the age of consent to 18 years and presented the same to the Governor at 2:15 o'clock p. m., February 19, 1895.

N. H. YOUNG,
Chairman.

(Page 276.)

Message from the Governor.

Executive Office, State of Idaho,
Boise City, February 19, 1895.

Mr. Speaker and Members of the House of Representatives, Idaho Legislature:—

Gentlemen:—I have this day signed House Bill No. 73, by Neill, that being "An Act to amend Section 6765 of the Revised Statutes, so as to raise the age of consent to eighteen years."

Very respectfully yours,
W. J. McCONNELL,
Governor.

SENATE JOURNAL.

(February 5, 1895. Page 157-158.)

Message from the House.

. . . . . .

Office of the Chief Clerk of the House of Representatives, Boise City, Idaho.

Mr. President:—

I am instructed to inform your honorable body that the House of Representatives has had under consideration and passed House Bill No. 73, by Neill, which is herewith transmitted,

Respectfully,
JAS. H. GWINN,
Chief Clerk.

H. B. No. 73, by Neill, filed for first reading.

(February 6, 1895. Page 161.)

Introduction and First Reading of Bills.

. . . . . .

H. B. No. 73, by Neill.

An Act to amend Section 6765 of the Revised Statutes so as to raise the age of consent.

Read for a first time and referred to committee on State affairs.

(February 7, 1895. Page 165.)

Reports of Standing Committees.

Boise City, February 7, 1895.

Mr. President:—

Your committee on State Affairs respectfully report that they have had under consideration H. B.

No. 73, by Neill, and recommend that the same do pass.

ROUNDS,
Chairman.

H. B. No. 73 placed on calendar.

(February 9, 1895. Page 176.)

Report of Committee of the Whole.

Boise City, February 9, 1895.

Mr. President:—

Your committee of the whole respectfully report that they have had under consideration.....H. B. No. 73, by Neill, and recommend that it do pass as amended.....

MYER,
Chairman.

On motion of Senator Myer the report of the committee of the whole was adopted.....

H. B. No. 73. Amendments ordered printed and when printed bill ordered filed for second reading.

(February 11, 1895. Page 179.)

Second Reading of Bills.

H. B. No. 73 read for a second time and recommitted to the committee on judiciary.

(February 15, 1895. Page 199.)

S. B. No. 73 was, by consent, taken out of the hands of the judiciary committee and referred to the committee on State affairs.

(February 16, 1895. Page 202-203.)

Reports of Standing Committees.

Boise City, February 16, 1895.

Mr. President:—

Your committee on State affairs respectfully report that they have had under consideration H. B. 73, by Neill, and recommend that the amendment as proposed by the committee of the whole be not adopted, and that the bill do pass.

ROUNDS,
Chairman.

Amendments to House Bill No. 73 proposed by the committee of the whole.

First Amendment.

In title of the bill, before the word years, strike out the word "eighteen" and insert "sixteen."

Second Amendment.

Also in Section 1, under first, strike out "eighteen," insert the word "sixteen."

H. B. No. 73, by Neill. Report of the committee on State affairs adopted, and original bill filed for second reading.

(February 18, 1895. Page 208.)

Third Reading of Bills.

H. B. No. 73, by Neill.

Read a third time and placed upon its final passage.

The President stated the question, "Shall the bill pass?"

Roll called and the bill passed by the following vote:

Voting aye—Senators Boyce, Cunningham, Day, Dewey, Golden, Hanrahan, Heitfeld, Millner, Myer and Parkinson, Rees, Robertson, Rounds, Smith, Steen, President pro tem. Bierbower—16.

Title read and approved and bill transmitted to the House

(February 19, 1895. Page 216.)

The President announced that he was about to sign.....H. B. No. 73.